

## **CHAPTER 7.**

### **Further Exploration of MBE/WBE and DBE Utilization on FHWA- and State-funded Contracts**

Building upon the analysis presented in Chapter 6, Keen Independent further examined the utilization of minority- and women-owned firms for different types and locations of ADOT contracts. Chapter 7 also reports participation of DBEs.<sup>1</sup> Results focus on FHWA- and state-funded contracts as the work involved in these two sets of contracts are similar and together they account for 99 percent of the dollars in the disparity study. Unless otherwise specified, results combine ADOT and LPA contracts.

Chapter 7 examines MBE/WBE and DBE utilization on FHWA- and state-funded contracts for different subsets of contracts:

- A. With and without DBE contract goals;
- B. Construction and engineering contracts;
- C. ADOT contracts and LPA contracts;
- D. July 2007-June 2011 and July 2011-June 2013 time periods;
- E. Northern, Central and Southern regions; and
- F. Prime contracts and subcontracts.

Part G builds on the analysis of MBE/WBE and DBE participation on prime contracts to assess whether there are barriers to MBE/WBE participation on ADOT construction contracts. Keen Independent presents analyses of case studies of MBE/WBE bidding on a random sample of contracts.

Part H provides similar information for ADOT engineering-related contracts.

Part I of Chapter 7 analyzes ADOT's operation of the Federal DBE Program for FHWA-funded contracts, including examination of any overconcentration of DBE participation by type of work. The study team also identifies the DBEs during the study period that obtained the most work.

Part J summarizes results, including whether any results from the disparity analysis presented in Chapter 6 vary across the subsets of contracts considered in Chapter 7.

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<sup>1</sup> Keen Independent calculated DBE participation on ADOT contracts using a somewhat different method than ADOT did in its Uniform Reports. DBE participation reported in this disparity study pertains to utilization of firms certified by DBEs at any point during the study period. ADOT calculates DBE participation for firms certified as DBEs at the time of specific contracts. That is one reason Keen Independent calculations of DBE participation are slightly higher than what is reported for commitments/awards in ADOT's Uniform Reports.

## A. Utilization With and Without DBE Contract Goals

ADOT set DBE contract goals during the last two years of the study period on some FHWA-funded contracts. Other FHWA-funded contracts did not have DBE contract goals.

**DBE participation.** Keen Independent's analysis shows higher DBE utilization on contracts with DBE contract goals than those without contract goals. As shown in Figure 7-1, 8.1 percent of contract dollars went to DBEs when ADOT set a DBE contract goal. Without DBE contract goals, DBE participation was 5.0 percent. ADOT might consider this 5.0 percent participation when projecting the amount of DBE participation it can achieve through neutral means (see Chapter 8).

**MBE/WBE participation.** MBE/WBE participation was about 11 percent on contracts with DBE contract goals and contracts without contract goals.

The primary difference in participation between these two sets of contracts was the amount of MBE/WBE participation that went to firms that were DBE certified and those that were not. About 3 percent of contract dollars went to non-DBE-certified MBE/WBEs on contracts with goals (the difference between the 11.3 participation overall MBE/WBE participation and the 8.1 percent DBE participation). Without DBE contract goals, 6.4 percent of contract dollars went to non-DBE-certified minority- and women-owned firms.

**Figure 7-1.**  
MBE/WBE and DBE share of dollars for  
contracts with and without DBE  
contract goals, July 2007-June 2013

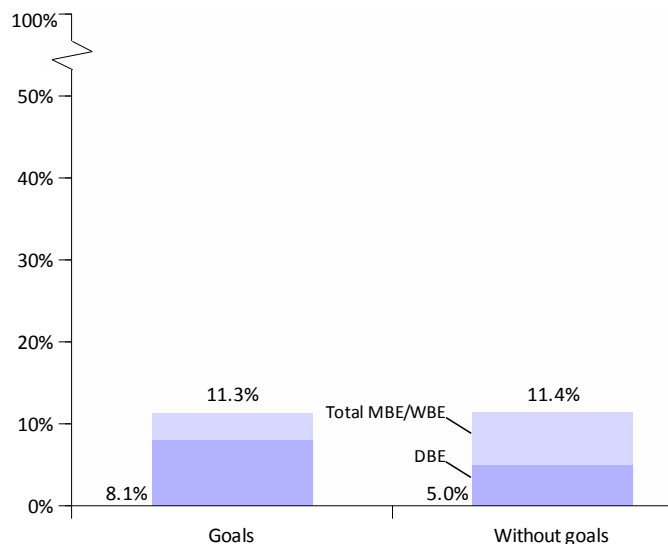
Note:

Dark portion of bar is certified DBE utilization.

Number of contracts/subcontracts analyzed is  
3,763 with DBE contract goals and 9,743 without  
contract goals.

Source:

Keen Independent from data on ADOT and LPA  
FHWA- and state-funded prime contracts and  
subcontracts, July 2007-June 2013.



## B. Construction and Engineering Contracts

Figure 7-2 on the following page presents MBE/WBE participation for construction contracts and engineering contracts. Overall MBE/WBE participation was higher on engineering-related contracts (about 24%) than construction contracts (9.8%). Participation of DBEs was also higher on engineering-related contracts (14%).

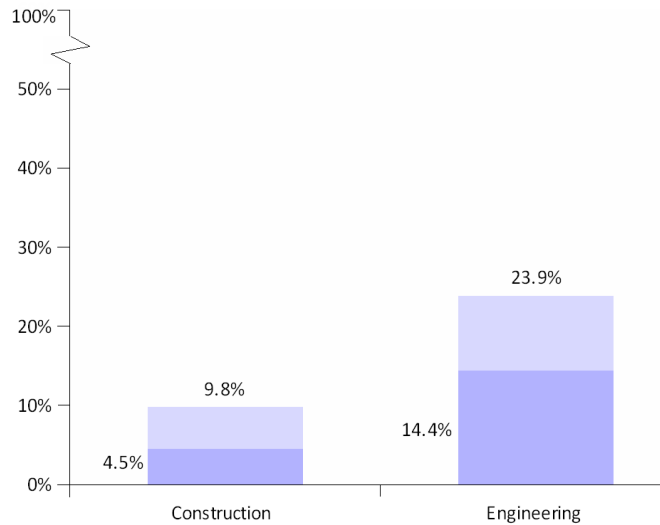
**Figure 7-2.**  
MBE/WBE and DBE share of dollars for  
construction and engineering  
contracts, July 2007-June 2013

**Note:**

Dark portion of bar is certified DBE utilization.  
Number of contracts/subcontracts analyzed is  
11,061 for construction and 2,445 for engineering.

**Source:**

Keen Independent from data on ADOT and LPA  
FHWA- and state-funded prime contracts and  
subcontracts, July 2007-June 2013.



### C. Utilization in ADOT Contracts and Local Public Agency Contracts

Most of the FHWA- and state-funded transportation contracts examined in this disparity study were for ADOT projects (\$4.5 billion out of the \$4.9 billion in contract dollars analyzed). Other contracts totaling \$0.4 billion are for local public agencies (LPAs). Keen Independent researched whether local public agency projects had a similar level of MBE/WBE and DBE participation as ADOT projects. (Note that eight large cities and counties bid and award their own LPA contracts, but ADOT handles LPA contracts on behalf of smaller public agencies.)

As shown in Figure 7-3, DBE participation was 5.7 percent on ADOT contracts, higher than for LPA contracts (4.8%). However, overall MBE/WBE utilization was higher on LPA projects (14.5%) than ADOT projects (11.1%).

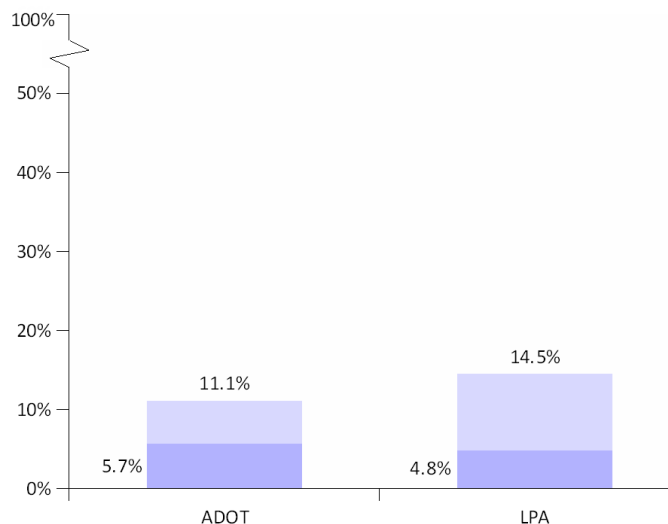
**Figure 7-3.**  
MBE/WBE and DBE share of dollars for  
ADOT and LPA projects, July 2007-June  
2013

**Note:**

Dark portion of bar is certified DBE utilization.  
Number of contracts/subcontracts analyzed is  
12,045 for ADOT contracts and 1,461 for LPA  
contracts.

**Source:**

Keen Independent from data on ADOT and LPA  
FHWA- and state-funded prime contracts and  
subcontracts, July 2007-June 2013.



#### D. Utilization in July 2007-June 2011 and July 2011-June 2013 Time Periods

Keen Independent analyzed whether overall MBE/WBE participation changed between the first four years and the last two years of the study period (when DBE contract goals were reintroduced). As shown in Figure 7-4, there was little difference in MBE/WBE participation for July 2007 through June 2011 compared with July 2011 through June 2013. The percentage DBE participation was higher for July 2011-June 2013 contracts (8.2%) than earlier contracts (4.3%).

**Figure 7-4.**  
MBE/WBE and DBE share of dollars for contracts awarded July 2007-June 2011 and awarded July 2011-June 2013

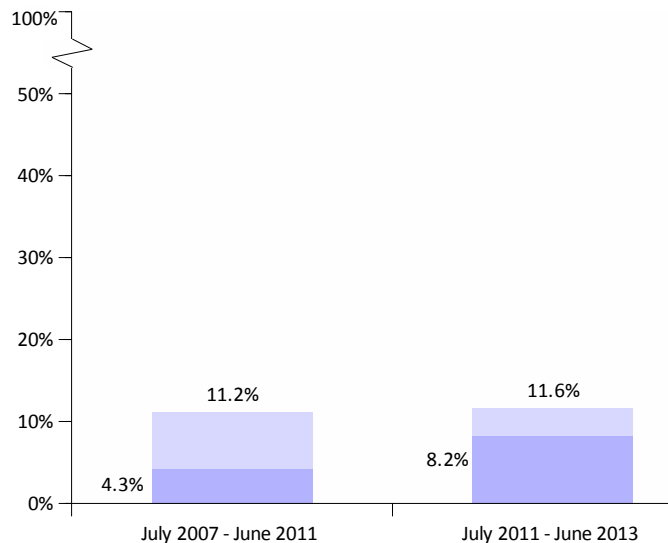
**Note:**

Dark portion of bar is certified DBE utilization.

Number of contracts/subcontracts analyzed is 7,377 for July 2007-June 2011 and 6,129 for July 2011-June 2013.

**Source:**

Keen Independent from data on ADOT and LPA FHWA- and state-funded prime contracts and subcontracts, July 2007-June 2013.



#### E. Utilization in Northern, Central and Southern Regions

Figure 7-5 shows that utilization of minority- and women-owned firms was about the same in Northern and Central Arizona (about 12%) and somewhat higher in Southern Arizona (14.8%). DBE participation ranged from 6.1 percent in Central Arizona to 7.3 percent in Southern Arizona. Total dollars going to MBE/WBEs and DBEs was highest for Central region projects as \$3.0 billion of the \$4.9 billion in contracts was in this region.

**Figure 7-5.**  
MBE/WBE and DBE share of dollars for contracts in Northern, Central and Southern regions

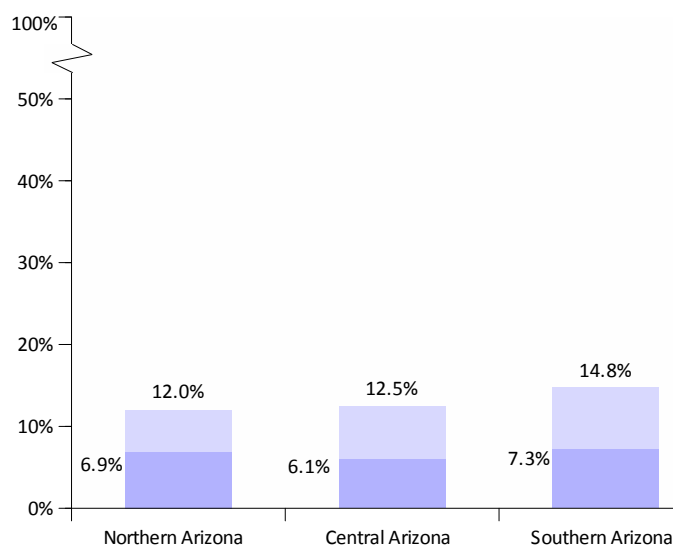
**Note:**

Dark portion of bar is certified DBE utilization.

Number of contracts/subcontracts analyzed is 6,576 for Northern region, 5,651 for Central region and 3,332 for Southern region.

**Source:**

Keen Independent from data on ADOT and LPA FHWA- and state-funded prime contracts and subcontracts, July 2007-June 2013.



## F. Utilization in Prime Contracts and Subcontracts

MBE/WBEs obtained about 22 percent of ADOT subcontract dollars, with DBEs accounting for about two-thirds of this amount (14.6 percentage points). This means that more than three-quarters of subcontract dollars went to majority-owned firms during the study period.

MBE/WBEs received 7 percent of prime contract dollars.<sup>2</sup> Two percent of total prime contract dollars went to DBEs.

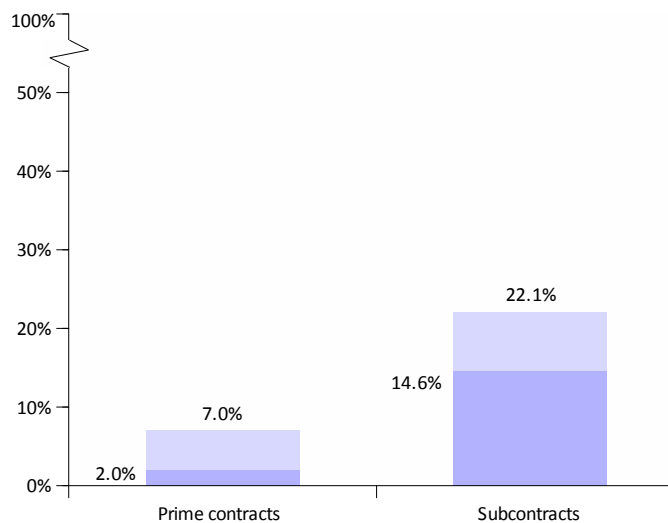
**Figure 7-6.**  
MBE/WBE and DBE share of dollars for  
prime contracts and subcontracts

**Note:**

Dark portion of bar is certified DBE utilization.  
Number of prime contracts analyzed is 1,552.  
Number of subcontracts analyzed is 11,496.

**Source:**

Keen Independent from data on ADOT and LPA  
FHWA- and state-funded prime contracts and  
subcontracts, July 2007-June 2013.



Keen Independent also analyzed MBE/WBE and DBE participation on large and small prime contracts during the July 2007 through June 2013 study period:

- MBE/WBEs received 6.9 percent of prime contract dollars on large contracts (\$100,000 or more); and
- On small contracts, 19.9 percent of prime contract dollars went to minority- and women-owned firms.

## G. Analysis of Potential Barriers to MBE/WBE/DBE Participation in ADOT Construction Contracts

Keen Independent analyzed participation of minority- and women-owned firms as prime contractors on ADOT construction contracts during the July 2007 through June 2013 study period.

### Utilization of MBE/WBEs and DBEs as prime contractors on ADOT construction contracts.

Minority- and women-owned firms won 177 or 12 percent of the 1,452 FHWA- and state-funded construction prime contracts during the study period. Because MBE/WBEs won smaller contracts,

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<sup>2</sup> The study team analyzed dollars going to prime contractors based on amounts retained by prime contractors after subtracting the value of subcontracts.

on average, MBE/WBEs only received 5.2 percent of construction prime contract dollars, or \$650 million out of \$3.1 billion of the dollars retained by prime contractors (i.e., not subcontracted).

DBEs won 52 construction prime contracts totaling \$25 million during the study period (0.8% of the total dollars).

**ADOT bid process for construction contracts.** ADOT awards construction contracts to low bidders (that are deemed responsive and responsible). It is possible that some aspects of the bidding process present barriers to small business participation as prime contractors, including for MBE/WBEs.

Keen Independent examined ADOT requirements for bidding on its construction contracts, processes for notifying potential bidders of construction contract opportunities, and methods for selecting a prime contractor to perform the work in order to explore this possibility.

**State code.** Arizona Revised Statute Title 34 and Arizona Administrative Code Title 17 govern public construction and services ancillary to that mission, such as consulting. ADOT follows these requirements and other state law pertaining to public works contracts in its contracting practices.

**Bonding.** Bid, payment and performance bonds are required under Arizona state law for public works contracts. Bid bonds are required to be 10 percent of the proposed bid. In-depth interviews with business owners and managers and the results of the availability interviews with Arizona businesses identified bonding as a barrier for minority- and women-owned firms (see Chapter 4 and Appendix J).

**Advertisement of invitations to bid.** Public bidding of ADOT construction contracts is generally required by Arizona state law. Public bidding is advertised in at least one newspaper, at least 14 days prior to the bid's deadline. ADOT also advertises construction contract bid opportunities on its website. Private bid services such as BidExpress may also provide information on ADOT contracts that are available to bid.

It does not appear difficult to learn of ADOT contract opportunities if potential bidders are familiar with ADOT's process for communicating those opportunities. However, when surveyed, MBE/WBEs were much more likely than majority-owned firms to report difficulties learning about ADOT bid opportunities (and local agency bid opportunities).

**Bid process.** Firms seeking to bid on ADOT construction prime contracts follow the process below:

- The firm must be prequalified for ADOT projects, and for a project of the appropriate size;
- The firm must request project and bidding materials from ADOT; and
- The firm must submit a bid, either physically or through ADOT's electronic bidding system.

Prequalification is discussed below.

**Prequalification requirement for construction prime contractors.** Any firm wishing to bid as a prime contractor on an ADOT construction project must first be prequalified. To become prequalified, a firm must submit a prequalification application, which is assessed by a Contractor Prequalification Board comprised of ADOT employees.

The prequalification application requires:

- General information about the firm;
- A financial statement from a public accountant;
- A statement of experience containing details of completed projects; and
- Other information about the company.

Applications for prequalification must be submitted at least 15 calendar days prior to the bid opening date of a project a contractor wishes to bid to allow time for their prequalification application to be reviewed and either approved or denied. Once approved, prequalification is valid for fifteen months from the date of the submitted financial statement.

Should the Contractor Prequalification Board approve a firm's prequalification application, they then set a prequalification limit — the dollar limitation of each contract, based on the Department's estimate of contract value, for which a contractor may submit a proposal to the Department.

Prequalification limits are determined based on:

- The contents and nature of the submitted financial statement;
- The amount of experience the firm has with transportation construction, especially on ADOT projects; and
- Other information in the prequalification application that the Board deems relevant.

It is worth noting that, as set out in Arizona Administrative Code R17-3-202F, firms that have successfully completed a construction contract for ADOT in the past five years may be given a prequalification limit up to twice as high as firms that have not. The past experience factor may perpetuate advantages to firms that have been successful in obtaining ADOT construction contracts in the past.

**Analysis of bids on ADOT construction contracts.** Keen Independent analyzed bid information for a random sample of 66 ADOT construction contracts from July 2007 through June 2013 (see Appendix C for a description of this methodology). In total, 457 bids were submitted for these 66 contracts. MBE/WBEs submitted 54 of the 457 bids:

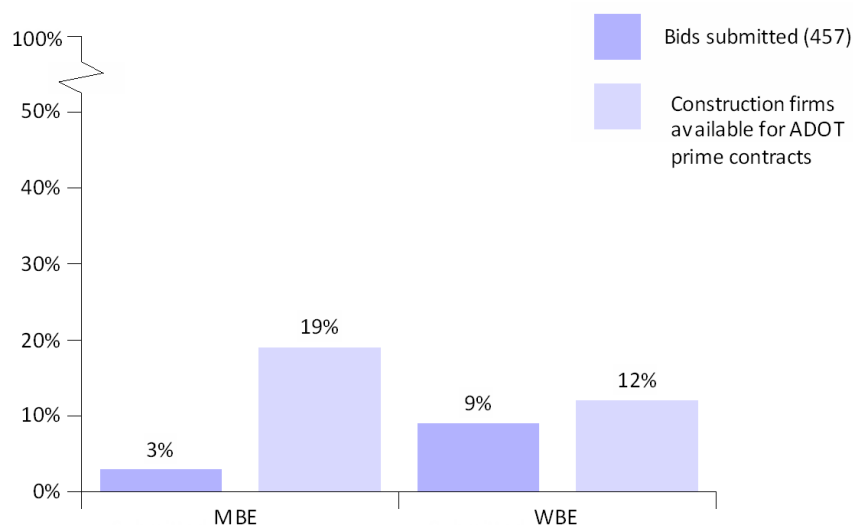
- A total of 12 bids on these prime contracts (3% of all bids) came from minority-owned firms (six different firms); and
- 42 bids (9% of all bids) came from WBEs (14 different firms).

The proportion of bids from MBEs was low compared with the share of firms available for prime construction contracts that were MBEs (19%). Bids from WBEs were more in line with the proportion of available firms that were WBEs (12%).<sup>3</sup>

**Figure 7-7.**  
MBE/WBE bids as a share of total bids submitted on ADOT construction contracts

Note: Based on analysis of 457 bids on 66 contracts randomly sampled with the July 2007-June 2013 study period.

Source: Keen Independent Research from ADOT contract records.



There is also some indication that minority-owned firms that did bid on ADOT construction contracts were less likely to be successful than other firms. As shown in Figure 7-8, 8 percent of the bids submitted by MBEs resulted in contract awards, below the 14 to 15 percent win rate found for WBEs and majority-owned firms bidding on ADOT contracts.

The analysis does not indicate that MBE bids were unfairly treated by ADOT; it may be that MBEs were less price-competitive. However, if this difference in winning percentage persisted for all contracts, not just the sample of 66, it might lead to discouragement of bids from minority-owned firms.

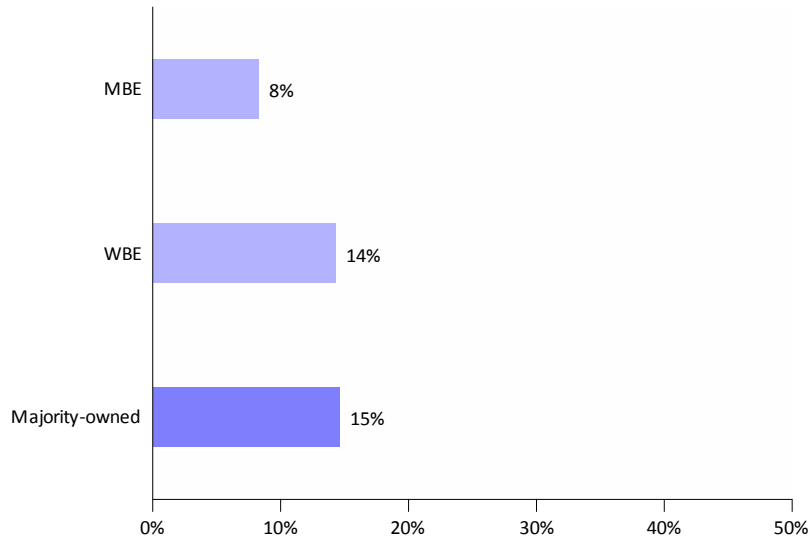
<sup>3</sup> Note that this is based on a count of firms identified in the availability analysis that were available for ADOT construction prime contracts; it is not dollar-weighted.



Figure 7-8.  
Percentage of bids  
that results in  
contract awards  
on ADOT  
construction  
contracts

Note: Can also be  
interpreted as “odds of  
winning” based on  
analysis of 457 bids on  
66 contracts randomly  
sampled within the July  
2007-June 2013 study  
period.

Source: Keen  
Independent Research  
from ADOT contract  
records.



## H. Analysis of Potential Barriers to MBE/WBE/DBE Participation in ADOT Engineering-related Prime Contracts

Keen Independent also explored participation of minority- and women-owned firms in the 558 engineering-related contracts during the study period (FHWA- and state-funded only).

**Utilization of MBE/WBEs and DBEs as prime consultants on ADOT engineering-related contracts.** Minority- and women-owned firms were awarded 106 of the engineering-related prime contracts, or 19 percent of the total number of contracts. About \$85 million in prime contract dollars (after deducting subcontracts) went to MBE/WBEs, 20 percent of total prime contract dollars for engineering-related contracts. This was mostly due to participation of DBEs:

- DBEs won 60 of these prime contracts. DBEs accounted for 10.7 percent of the total prime contract dollars examined (\$45 million of the \$421 million total prime contract dollars for these contracts).
- In fact, engineering prime contract dollars going to DBEs exceeded the construction prime contract dollars awarded to DBEs (\$25 million), even though there was more than seven times more construction prime contract dollars than engineering prime contract dollars in the study period.

ADOT encouraged participation of DBE prime consultants on engineering prime contracts during the study period.

However, it is instructive to note that just 2 percent of engineering-related contract dollars went to white women-owned firms and 18 percent went to minority-owned companies. WBEs did not appear to be as successful as MBEs in obtaining engineering prime contracts. This was largely because of relatively small prime contract amounts for WBEs (\$159,000 in average retained dollars

per prime contract) compared with other firms (\$755,000 in average retained dollars per prime contract).

**ADOT contract award process for engineering-related contracts.** ADOT uses a qualifications-based selection process to award engineering-related contracts. Firms competing for ADOT engineering-related contracts must first be prequalified by ADOT. Only firms seeking to be prime consultants require prequalification. ADOT uses the same advertising process for consultant selection as it does for contractor selection.

**Prequalification.** Compared to ADOT's prequalification of construction contractors, which focuses on the *amount* of work ADOT will allow a contractor to perform at one time, ADOT's consultant prequalification process focuses on the *types* of work it will allow a firm to conduct.

ADOT specifies general classes of work (such as bridge design) that may then have many specific "area classes" for which consultants must seek ADOT prequalification. Each firm applies for ADOT prequalification by specific area class (often for multiple area classes). ADOT considers firm qualifications to perform an area class and may approve a firm for some area classes and not others. Prequalification for consultants typically takes up to ten business days.

The prequalification application is both completed and submitted online using ADOT's electronic Contract Management System (eCMS). The prequalification application requires:

- General information about the firm;
- Information about the specific area classes the firm, and each key member of the firm, are qualified to perform;
- Information about past projects the firm has completed; and
- Other various information.

ADOT begins a new prequalification period every two years, and firms that submit an application during that time will be prequalified for that period. According to ADOT staff, firms' applications are rarely, if ever, entirely rejected.

**Selection process.** Prequalification for engineering-related contracts does not necessarily mean that a firm will receive any ADOT work. Once they are prequalified for specific area classes, firms must learn of and submit qualifications statements for specific ADOT contracts. And, a prime consultant's qualifications can be supplemented by subconsultants participating in a team.

ADOT typically begins the consultant selection process for a specific engineering-related contract by requesting that consultants submit statements of qualification, which are evaluated by a panel within ADOT consisting of at least three people. (Responses to these requests for SOQs are referred to as "proposals" in this report.) Each member of the panel conducts an independent evaluation of each firm and gives each proposal a score based upon their evaluation. The scoring rubric is included in the request for SOQs. Evaluation criteria and total number of points available change from project to project, but the ADOT panel typically evaluates consultants based on the following criteria:

- **Project understanding and approach.** One of the evaluation factors is how successfully, clearly and precisely the consultant expressed an understanding of the nature and scope of work and the major tasks and issues as well as how well they identified any problems they are likely to encounter.
- **Experience and qualifications.** Evaluators consider the experience and qualifications of the proposed consultant team in light of the scope of the project, work classes involved, and ADOT policies.
- **Firm capability.** ADOT reviews the ability of the firm to do the work, including specialized qualifications and the capacity of the consultant team to accomplish the work given current staff workloads.
- **Past performance.** A consultant's performance is regularly evaluated while completing a project for ADOT, and a poor evaluation score on that project may result in up to five points being deducted from their score during the selection process.

Other factors, such as the firm's availability or current workload may also be considered.

Depending on the project, ADOT may deem it necessary to interview submitting firms as well. In this case, ADOT may choose to interview all proposers, or only the highest-ranked ones. If not all proposers are to be interviewed, ADOT typically includes at least the three highest-ranking consultants in the interview process. Each panel member also scores consultants based on their interview.

Once all proposals have been independently scored by all panel members, the panel meets to discuss the scoring. Panel members may at this point adjust their scoring based on the discussion. Scores are then compiled and firms are ranked based on the highest to lowest average score. Firms must score at least 70 percent of the maximum available points in order to be eligible for award of the contract. The firm with the highest average score is awarded the contract. All participants are notified of the award within five business days.

Procedures are in place if consultants wish to protest an award. All firms that submitted a proposal are entitled to review the scores and proposals of the firm(s) selected for the contract.

In accordance with regulations regarding qualifications-based procurement, ADOT negotiates price after the consultant is selected.

**Analysis of proposals on ADOT engineering-related contracts.** Keen Independent analyzed the relative number of proposals submitted by MBEs and WBEs for a random sample of engineering-related contracts during the study period.

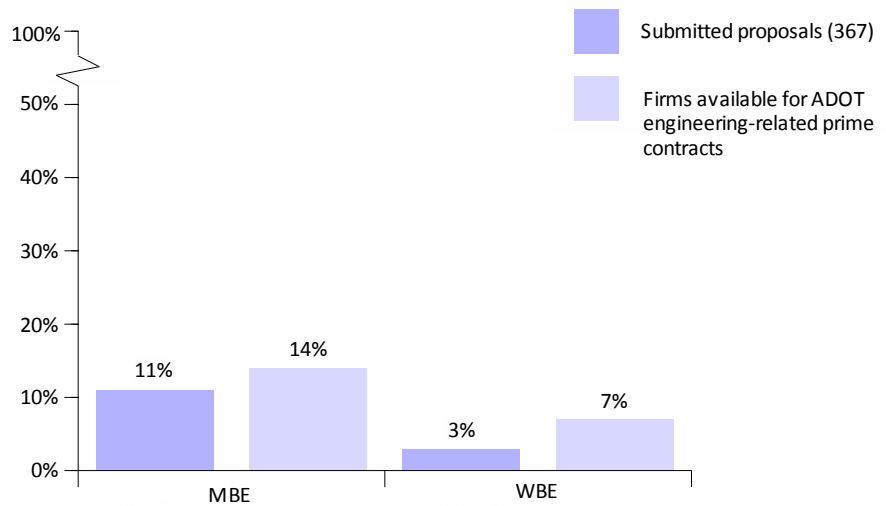
The study team was able to collect and analyze proposal evaluation data for 28 ADOT engineering-related projects for contracts executed during the study period. Of the 367 proposals submitted, 39 (11%) were submitted by MBEs and 12 (3%) were submitted by WBEs.

Based on the availability analysis, 14 percent of companies available for ADOT engineering-related prime contracts were MBEs and 7 percent were WBEs. The relative number of proposals for WBEs appears lower than what might be expected from their relative availability for this work (3% compared with 7%). Figure 7-9 displays these results.

Figure 7-9.  
MBE/WBE  
proposals as a  
share of total  
proposals  
submitted on a  
sample of ADOT  
engineering  
contracts

Note: Based on analysis  
of 367 proposals on 28  
contracts randomly  
sampled within the July  
2007-June 2013 study  
period.

Source: Keen  
Independent Research  
from ADOT contract  
records.



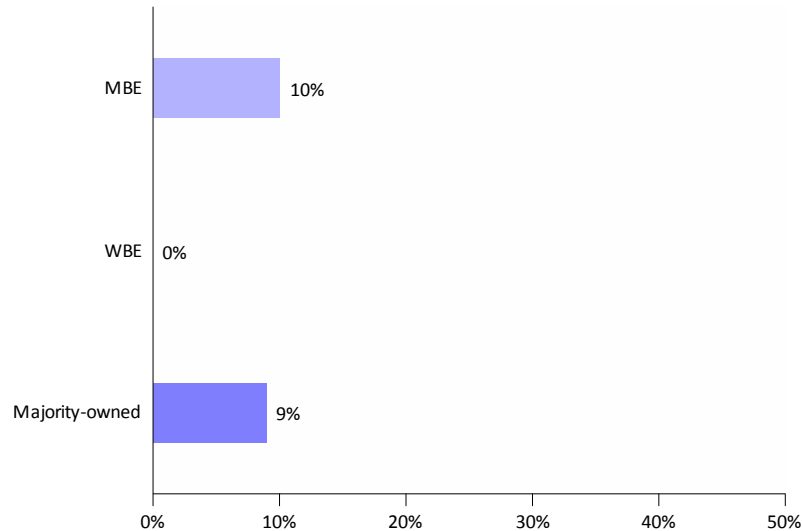
In the 28 randomly-sampled engineering-related contracts, none of the awards went to WBEs. Therefore, the success rate for WBEs was 0 percent, as shown in Figure 7-10. Four of the 39 proposals from MBEs resulted in a contract award (10% success).

Keen Independent examined a small sample of total ADOT engineering-related contracts, and the relatively low number of proposals and zero utilization in this sample was not consistent with the number of engineering-related contracts WBEs won overall (9% of the total).

Figure 7-10.  
Proportion of  
proposals that  
resulted in ADOT  
contract awards

Note: Can also be interpreted as “odds of winning” based on analysis of 367 proposals bids on 28 contracts randomly sampled within the July 2007-June 2013 study period.

Source: Keen Independent Research from ADOT contract records.



## I. ADOT Operation of the Federal DBE Program, including Overconcentration Analysis

This part of Chapter 7 examines:

- ADOT’s operation of the DBE contract goals program;
- Any overconcentration of DBEs;
- Participation of individual DBEs in ADOT contracts;
- DBE participation as prime contractors; and
- Race- and gender-neutral efforts.

**DBE contract goals program.** The Federal DBE Program provides for recipients of FHWA, FAA and FTA funds to set an overall goal for DBE participation and use DBE contract goals to meet any portion of their overall goal they do not project being able to meet using race-neutral means.<sup>4</sup> However, federal regulations direct those operating the program to reduce or eliminate the use of contract goals to ensure that they do not result in exceeding the overall goal.<sup>5</sup>

Because of the *Western States Paving* court decision in 2005 and subsequent guidance from USDOT, ADOT did not set DBE contract goals from January 2006 through fall 2010 (see Chapter 2 for further explanation). Since that time ADOT has set DBE contract goals for some of its FHWA-funded construction and engineering-related contracts, but not its FAA- and FTA-funded contracts. Keen Independent briefly reviews ADOT’s application of DBE contract goals here.

<sup>4</sup> 49 CFR Section 26.51(d).

<sup>5</sup> 49 CFR Section 26.51(f)(2). And, if an agency exceeds its overall goal in two consecutive years through the use of contract goals, it must reduce its use of contract goals proportionately in the following year (see 49 CFR Section 26.51(f)(4)).

**Federal regulations governing use of DBE contract goals.** The Federal DBE Program outlines proper use of DBE contract goals, including:

- Only setting DBE contract goals on USDOT-funded contracts that have subcontracting possibilities;<sup>6</sup>
- Not having to set a DBE contract goal on every USDOT-funded contract;<sup>7</sup>
- The fact a DBE goal for a specific contract is set separately from the overall DBE goal, and that it may be higher or lower than the overall goal depending on factors such as the type of work involved, the location of the work and the availability of DBEs for the work of the particular contract;<sup>8</sup> and
- That the DBE contract goal should not be divided into subgoals for specific DBE groups.<sup>9</sup>

Bidders or proposers comply with a DBE contract goal by making good faith efforts to meet it. A bidder or proposer can show this in one of two ways:

- By showing it has obtained enough DBE participation to meet the contract goal; or
- Documenting that it made adequate good faith efforts to meet the goal, even though it did not succeed in doing so.<sup>10</sup>

Federal regulations allow for an agency to require such information at time of bid or proposal or up to seven days after bid opening (to be reduced to five days beginning January 1, 2017).<sup>11</sup> The regulations provide for some flexibility for what a proposer needs to provide under negotiated procurements such as design-build contracts.<sup>12</sup> Regulations also establish procedures for calculating the value of the DBE participation for specific types of subcontractors and suppliers.<sup>13</sup> For example, only if a DBE performs a “commercially useful function” can it be counted toward the goal.

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<sup>6</sup> 49 CFR Section 26.51(e)(1).

<sup>7</sup> 49 CFR Section 26.51(e)(2).

<sup>8</sup> Ibid.

<sup>9</sup> 49 CFR Section 26.51(e)(4).

<sup>10</sup> 49 CFR Section 26.53(a).

<sup>11</sup> 49 CFR Section 26.53(b)(3)(i).

<sup>12</sup> 49 CFR Section 26.53(b)(3)(ii).

<sup>13</sup> 49 CFR Section 26.55.

If the agency determines that a bidder or proposer did not make good faith efforts to meet the contract goal, it must provide that bidder or proposer an opportunity for administrative reconsideration.<sup>14</sup>

Once the prime contractor has identified a DBE subcontractor to meet a contract goal, it may not terminate that DBE or substitute another DBE without the agency's prior consent. An agency may only give such consent if there is good cause for terminating the listed DBE (federal regulations provide direction on what constitutes "good cause").<sup>15</sup>

**ADOT operation of DBE contract goals program.** ADOT uses DBE contract goals for FHWA-funded contracts in compliance with the federal regulations in 49 CFR Part 26. Key features include the following.

- ADOT sets DBE contract goals on a contract-by-contract basis. It sometimes sets goals higher than its overall DBE goal for FHWA-funded contracts and sometimes sets goals lower than its overall goal. On some contracts, it does not set a DBE contract goal.<sup>16</sup> ADOT does not divide a DBE contract goal by DBE group, in accordance with federal regulations.
- ADOT has recently adopted a new goal-setting methodology that considers the types of work involved in a contract, location of the contract, size of the contract, availability of DBEs for specific types of work and other factors (encompassing each of the factors listed in federal regulations concerning setting DBE contract goals<sup>17</sup>). It only considers currently-certified DBEs when establishing a DBE contract goal. As an example of "other factors," ADOT can reduce a contract goal for pavement preservation projects or other types of contracts where it is more difficult to obtain DBE participation. At the time of this report, ADOT included eight areas of special adjustments that it considered on each contract.

ADOT's Business Engagement and Compliance Office (BECO) is responsible for proposing an initial DBE contract goal through the quantitative and qualitative factors described above (using a committee structure). BECO then submits the goal to the contracting department, which can request reconsideration of a DBE contract goal if necessary. (This process is also applied for local agency contracts using FHWA funds.) ADOT developed this approach and factors it considers in goal-setting through consultation with DBEs, large prime contractors and others.

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<sup>14</sup> 49 CFR Section 26.53(d).

<sup>15</sup> 49 CFR Section 26.53(f)(1).

<sup>16</sup> Based on discussions with ADOT staff and review of ADOT goal-setting procedures.

<sup>17</sup> 49 CFR Section 26.53(e)(2).

- ADOT has a process for considering good faith efforts submissions from any bidder or proposer that is unable to meet the DBE contract goal. In the past two years, bidders on construction contracts almost always meet the DBE contract goal; they very rarely attempt to comply with the program by showing good faith efforts to meet a goal that they were unable to meet. According to ADOT staff, this has occurred only twice in the past two years, with the same prime contractor.
  - ADOT found the good faith efforts lacking in the first instance as the contractor did not supply sufficient documentation.
  - In the second instance, it appeared to ADOT staff that the bidder used the lack of response to good faith efforts requirements to get out of a bid for which it was the apparent low bidder without having its bid bond used.<sup>18</sup>
- For engineering on-call contracts, ADOT informs proposers on these contracts of an overall DBE goal for the contract and that they will be required to meet it or make good faith efforts to do so as they perform specific task orders under the contract. Since prime consultants do not know the exact scope of work for task orders they will receive when they are awarded a contract, they can augment their teams of subconsultants to meet a DBE goal for a task order. ADOT staff report that prime consultants more frequently indicate they cannot meet a DBE goal on a task order even though they made good faith efforts to do so (estimated to be about 10 percent of the time by BECO staff). ADOT BECO staff reported that they rarely deny those submissions of good faith efforts. When they do, ADOT works with a prime consultant to comply with the DBE goal for the task order. BECO staff indicated that no prime consultant lost a task order because it did not comply with the DBE contract goals program.
- In sum, it appears that ADOT has procedures in place to effectively set DBE contract goals and consider bidders' and proposers' good faith efforts to meet those goals. Based on interviews with staff, it appears that only one contract was lost due to non-compliance with the program assuming that the other contract was because the bidder chose not to follow through on its requirement to show documentation of good faith efforts.

Keen Independent also examined local public agency compliance with the DBE contract goals program. ADOT staff reported that there was some confusion by local public agencies that the agency itself was responsible for meeting a DBE goal for a specific LPA contract. (This is not the case, as the bidder or proposer is responsible to comply with the DBE contract goal on a contract.)

ADOT staff also indicated that a few local public agencies attempt to circumvent the program by underreporting subcontracting opportunities in DBE goal assessment requests.

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<sup>18</sup> Based on communications with ADOT BECO staff.



**Results of the DBE contract goals program.** Using a methodology that counts toward DBE participation any firm certified as a DBE during the study period (which includes some recently-graduated firms), Keen Independent determined that \$81.7 million in contract dollars were awarded to DBEs on FHWA-funded contracts for which DBE contract goals were applied. This was comprised of 667 subcontracts to DBEs totaling \$79 million and 16 prime contracts for \$3 million. There was a total of \$1.0 billion in FHWA-funded contracts for which DBE contract goals applied.

- Overall participation of DBEs was 8.1 percent on contracts with DBE contract goals, as shown in the bottom portion of Figure 7-11. DBE participation on contracts without goals was 5.0 percent.
- DBEs received 21 percent of the subcontract dollars and 0.4 percent of the prime contract dollars on contracts with DBE contract goals. By comparison, DBEs received 12 percent of the subcontract dollars and 2.4 percent of the prime contract dollars on FHWA- and state-funded contracts without DBE contract goals.
- These results indicate that DBE contract goals affect subcontractor participation and may have no direct positive effect on DBE participation as prime contractors.

Figure 7-11.

MBE/WBE and DBE utilization for ADOT contracts with and without DBE contract goals, July 2007-June 2013

	FHWA-funded contract with goals			FHWA- and state-funded contracts w/o goals		
	Number of prime and subcontracts	\$1,000s	Percent of dollars	Number of prime and subcontracts	\$1,000s	Percent of dollars
<b>MBE/WBEs</b>						
African American-owned	29	\$ 1,052	0.1 %	45	\$ 18,881	0.5 %
Asian-Pacific American-owned	19	381	0.0	22	5,263	0.1
Subcontinent Asian American-owned	59	2,717	0.3	99	16,128	0.4
Hispanic American-owned	398	26,210	2.6	786	135,113	3.5
Native American-owned	78	33,726	3.4	97	24,725	0.6
WBE (white women-owned)	640	49,102	4.9	1,504	243,569	6.2
<b>Total MBE/WBE</b>	<b>1,223</b>	<b>\$ 113,188</b>	<b>11.3 %</b>	<b>2,553</b>	<b>\$ 443,679</b>	<b>11.4 %</b>
Majority-owned	2,540	891,450	92.1	7,190	3,462,354	88.6
<b>Total</b>	<b>3,763</b>	<b>\$ 1,004,638</b>	<b>100.0 %</b>	<b>9,743</b>	<b>\$ 3,906,033</b>	<b>100.0 %</b>
<b>DBEs</b>						
African American-owned	19	\$ 802	0.1 %	14	\$ 720	0.0 %
Asian-Pacific American-owned	1	34	0.0	9	4,679	0.1
Subcontinent Asian American-owned	48	2,550	0.3	90	15,952	0.4
Hispanic American-owned	244	20,547	2.0	477	82,308	2.1
Native American-owned	61	33,592	3.3	80	21,003	0.5
WBE (white women-owned)	310	24,213	2.4	518	69,480	1.8
White male-owned DBE	0	0	0.0	0	0	0.0
<b>Total DBE</b>	<b>683</b>	<b>\$ 81,739</b>	<b>8.1 %</b>	<b>1,188</b>	<b>\$ 194,143</b>	<b>5.0 %</b>
Non-DBE	3,080	922,899	91.9	8,555	3,711,890	95.0
<b>Total</b>	<b>3,763</b>	<b>\$ 1,004,638</b>	<b>100.0 %</b>	<b>9,743</b>	<b>\$ 3,906,033</b>	<b>100.0 %</b>

Note: Numbers rounded to nearest tenth of 1 percent. Numbers may not add to totals due to rounding.

Source: Keen Independent from data on ADOT and LPA Program contracts July 2007-June 2013.

Most of the DBE participation on contracts with goals was distributed across Hispanic American-, Native American- and white women-owned firms. These three groups accounted for all but 0.4 percentage points of the 8.1 percent utilization of DBEs on these contracts.

Another way to examine the impact of DBE contract goals is to compare the dollars going to MBE/WBE with dollars to DBEs on those contracts. Results presented in Figure 7-11 indicate that most of the participation of African American-, Subcontinent Asian American-, Hispanic American- and Native American-owned firms on contracts with goals was from DBEs. Although more dollars on goals contracts went to white women-owned firms than other groups, less than one-half of those dollars were to DBE-certified firms.

Although DBE participation was relatively less on contracts without DBE contract goals (5.0% versus 8.1%), the overall participation of MBE/WBEs (11.4%) was similar to goals contracts due to relatively high participation of non-DBE-certified white women-owned firms. Much of this participation was one WBE: Coffman Specialties.

**Effect of DBE contract goals for construction and engineering-related contracts.** Keen Independent analyzed contracts with goals and without goals for construction contracts and engineering-related contracts (only FHWA- and state-funded contracts). For both sets of contracts, DBE participation was higher with contract goals than without goals:

- For construction contracts, 7.8 percent of contract dollars went to DBEs on construction contracts with goals compared with 3.6 percent without goals. Overall MBE/WBE participation was higher on construction contracts with goals (10.9%) than contracts without goals (9.5%).
- For engineering-related contracts, DBEs received 17.3 percent of dollars on goals contracts and 12.2 percent of dollars on non-goals contracts. As with construction contracts, overall participation of MBE/WBEs was higher on engineering-related contracts with DBE contract goals (21.4%) than contracts without goals (20.1%).

**Procurement contracts.** ADOT also has contracts with FHWA funding that go through the Procurement Office. ADOT staff reported difficulty identifying these Procurement Office contracts for application of DBE contract goals, as appropriate, as well as issues tracking DBE participation on these contracts for inclusion in Uniform Reports.

Keen Independent was not able to identify solutions for these difficulties in the course of this disparity study, but it warrants further ADOT attention in the future. Compliance with federal regulations for contracts with USDOT funds is required across contracting departments.

**Analysis of any overconcentration of DBEs.** The Federal DBE Program requires agencies implementing the program to take certain steps if they determine that “DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work” (see 49 CFR Section 26.33(a)). The Federal DBE Program does not specifically define “overconcentration.”

Keen Independent examined the representation of DBEs and work going to DBEs in three ways:

- Share of ADOT contract dollars within a type of work going to DBEs;
- Distribution of DBE dollars by work type; and
- Representation of DBEs among all firms available for specific types of contracts and subcontracts.

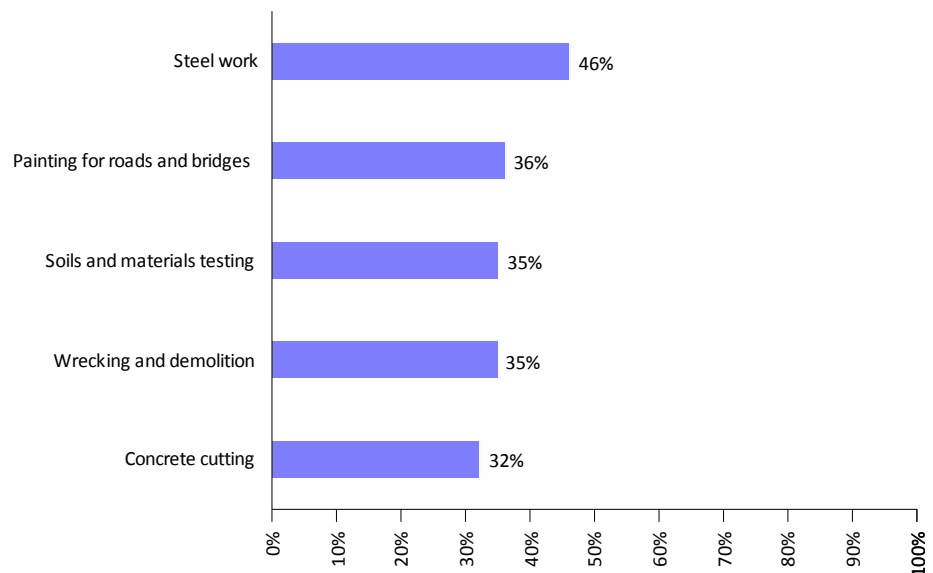
**Share of ADOT contract dollars within a type of work going to DBEs.** For each specific type of work examined in the study, the study team calculated the share of dollars going to firms certified as DBEs at any time during the study period. Figure 7-12 shows that DBEs accounted for more than 30 percent of the total work in five types of work. Steel work shows the highest percentage of DBE participation (46%) due to dollars received by Paradise Rebar. This firm has since graduated from the DBE Program, which may remove any concern that DBEs would account for a major portion of this work in the future.

For other state DOTs, trucking, traffic control, landscaping and surveying are areas that might have a relatively high share of work going to DBEs. Within the study period, only 16 percent of trucking dollars and 17 percent of surveying dollars went to DBEs. DBEs' share of landscaping was 12 percent and just 3 percent of traffic control dollars went to DBEs.

**Figure 7-12.**  
DBE share of total  
contract dollars on  
FHWA-, state-, FAA-  
and FTA-funded  
contracts, July 2007-  
June 2013

Note: Number of prime  
contracts/subcontracts  
analyzed is 13,667.

Source: Keen Independent  
Research from ADOT  
contract records.



**Distribution of DBE contract dollars across types of work.** Another way to examine potential overconcentration of DBEs is whether DBE participation is only found in certain types of work. That might be another indicator that DBE contract goals overly burden non-DBEs in those subindustries.

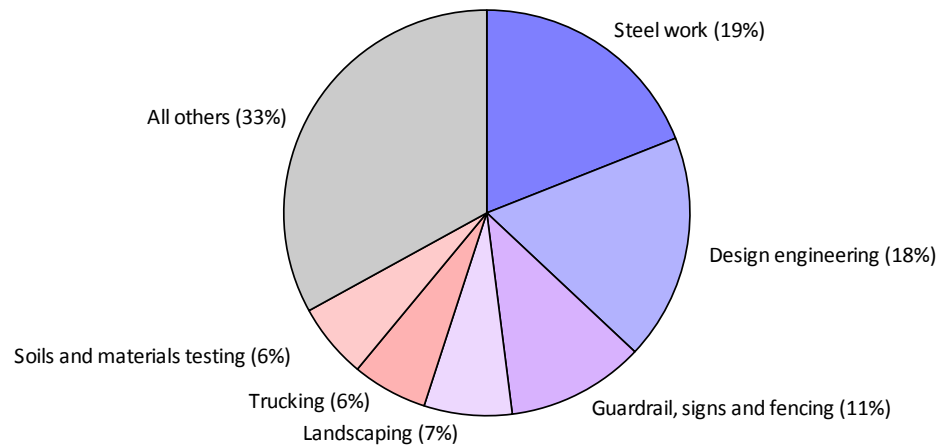
In the study period, steel work accounted for 19 percent of DBE participation, design engineering was 18 percent of DBE dollars and guardrail, signs and fencing work was 11 percent of dollars going to DBEs. Twenty other types of work individually represented between 1 and 7 percent of DBE

dollars, indicating broad participation of DBEs across types of work. This minimizes the possibility that any particular type of non-DBE is unduly burdened by the DBE contract goals program. Figure 7-13 presents these results.

**Figure 7-13.**  
DBE share of total contract dollars on FHWA-, state-, FAA- and FTA-funded contracts, July 2007-June 2013

Note: Number of prime contracts/subcontracts analyzed is 13,667.

Source: Keen Independent Research from ADOT contract records.



#### Representation of DBEs among firms available for particular types of contracts or subcontracts.

Finally, Keen Independent analyzed whether DBEs accounted for a dominant share of firms available for particular types, sizes or locations of ADOT prime contracts and subcontracts. The study team performed this analysis by:

- Determining the number of DBEs and total firms available for each prime contract and subcontract examined in the study.
- Divided the number of DBEs by total firms for each contract and subcontract to calculate the percentage of available firms for each contract that were DBEs (i.e., DBE representation = number of available DBEs ÷ total number of available firms).

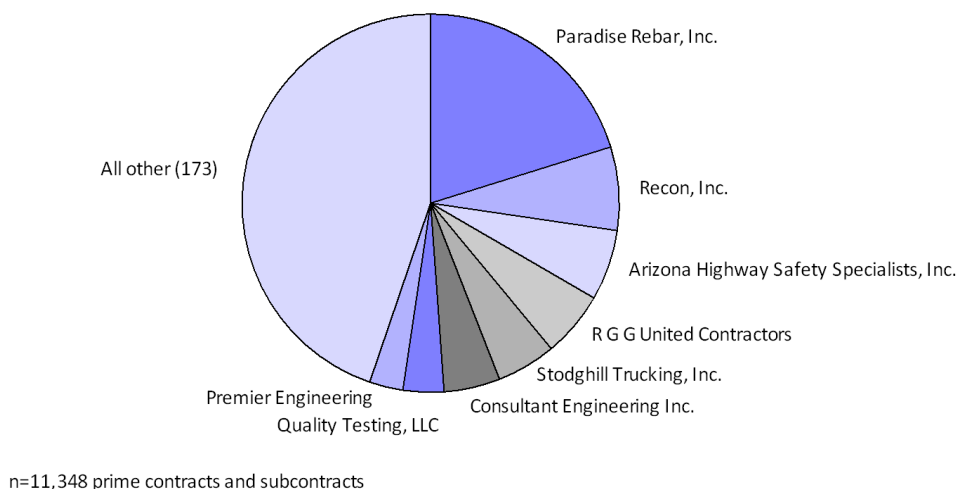
There were a few types of contracts for which DBEs represented 20 percent of the firms in the availability database matching that work, location and contract size, but none where worktype could be identified where DBEs were more than 20 percent of available firms. Based on firms in the availability analysis for this disparity study, DBEs did not constitute a dominant portion of firms available for any type of ADOT work.

**Participation of individual DBEs in ADOT contracts.** Eight DBEs accounted for more than one-half of the total FHWA-funded contract dollars going to DBEs during the study period. Most of these eight DBEs have either since graduated from the Program or have had their certification applications denied by ADOT. This shows that, in Arizona, firms benefiting the most from the Federal DBE Program do move out of the Program.

**Figure 7-14.**  
DBEs accounting for  
the most dollars of  
FHWA-funded  
contracts, July 2007  
– June 2013

Note: Number of prime  
contracts/subcontracts  
analyzed is 11,348.

Source: Keen Independent  
Research from ADOT  
contract records.



**DBE participation as prime contractors.** As noted earlier in Chapter 7, relatively little of prime contract dollars on FHWA-funded contracts went to DBE primes.

Keen Independent examined the 66 FHWA-funded prime contracts that went to DBE prime contractors. Three firms — Recon, Inc., Consultant Engineering Inc. and Premier Engineering Corp — accounted for more than two-thirds of these contract dollars. There were 26 other DBEs that won as prime contractors for FHWA-funded contracts, but in total accounted for relatively small dollars of those contracts.

**Race- and gender-neutral efforts.** Race- and gender-neutral programs are a major component of the Federal DBE Program. Federal regulations in 49 CFR Section 26.51(b) provide examples of race-neutral means of facilitating DBE participation, which we summarize below:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications and delivery schedules in ways that facilitate participation by DBEs and other small businesses;
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing;
3. Providing technical assistance and other services;
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities;

5. Implementing a supportive services program to develop and improve immediate and long-term business management, recordkeeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs, and other small business, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
8. Ensuring distribution of a DBE directory; and
9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

In addition, agencies such as ADOT must have prompt payment mechanisms (requiring prime contractor payment of subcontractors within 30 days from receipt of each payment made to the prime contractor).<sup>19</sup>

Agencies must also have a program element that fosters competition by small business concerns, taking steps such as eliminating unnecessary bundling of contract requirements.<sup>20</sup> Other small business program elements can be:

- Establishing a small business set-aside for prime contracts;
- Requiring bidders on multi-year design-build contractors or other large contracts to specify elements of the contract that are of a size that small businesses, including DBEs, can reasonably perform;
- On projects not having DBE contract goals requiring prime contractors to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work;
- Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs to compete for and perform prime contracts; and
- Ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

In addition, the Federal DBE Program provides guidance on establishing a mentor-protégé program to further the development of DBEs.<sup>21</sup>

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<sup>19</sup> 49 CFR Section 26.29.

<sup>20</sup> 49 CFR Section 26.39.

<sup>21</sup> Appendix D to 49 CFR Part 26 – Mentor-Protégé Program Guidelines.

The study team's review of ADOT neutral initiatives identified efforts across each of these areas. In addition, other groups in Arizona provide assistance that ADOT can leverage for DBE and other small business contractors and consultants.

**1. Bid notification and bidding/proposal process to encourage participation of DBEs and other small business.** ADOT has made substantial efforts to improve the flow of information of any firm interested in potential prime contracts and subcontracts.

- By visiting ADOT's website, firms interested in working as prime contractors or subcontractors on ADOT construction contracts can obtain:
  - Information about currently available construction projects;
  - Information about future projects;
  - Lists of companies that are plan holders for contracts out for bid (especially useful for subcontractors and suppliers); and
  - Lists of firms that are prequalified with ADOT (also useful to subcontractors and suppliers).
- Companies can also receive email notifications about current projects. Having an account at BidExpress allows companies to receive emails about current and upcoming project that may interest them. (Note that BidExpress is not a free service — it includes both a one-time fee for creating an account and a monthly fee to continue using their service to develop your bid and submit it online.)
- ADOT operates the AZ UTRACS web portal for online Bidder's List/Vendor Registration, DBE certification and Annual Update, Small Business Concern Registration, DBE/SBC and Vendor Directories and online DBE compliance.
- ADOT provides construction plans and specifications to DBEs at the BECO office in Phoenix.
- Businesses interested in engineering and other professional services contracts can also obtain information from the ADOT website. ADOT also provides a list of prequalified consultants (again, helpful to potential subconsultants).
- Goods and services vendors can register with ProcureAZ, the State of Arizona's online procurement portal. After vendors identify the types of goods and services they provide, they are automatically notified of bid opportunities.
- ADOT issues bi-weekly e-newsletters on DBE news and events, ADOT contract opportunities and other topics.
- Its DBE/SBC News website/blog features ADOT and statewide bidding, training and teaming opportunities.
- ADOT encourages online bidding across its contracting and procurement. This can also make it easier for small businesses to easily submit bids and proposals.

- To communicate bid opportunities on LPA contracts, ADOT maintains links to procurement websites to cities and counties across Arizona.
- ADOT maintains an email and outreach service for prime consultants and contractors looking for DBEs to work on their projects.
- Department staff participate in procurement fairs and similar events throughout the state.
- ADOT holds regular meetings with the construction and professional services industries, and has created the Professional Services DBE Task Force and the Construction DBE Task Force.
- ADOT's DBE Program staff trains internal staff, consultants, constructors and local public agency staff on DBE recruitment, utilization and compliance. ADOT also maintains a complaint process related to DBE issues.

## **2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing.**

ADOT provides workshops and other training for DBEs and other small businesses regarding bonding and financing. For example:

- ADOT has held bonding workshops in coordination with USDOT. Some DBEs have successfully obtained bonding through this effort.
- ADOT also has regular webinars and in-person training opportunities covering topics such as finance, bidding, marketing and operations (some of which are held in conjunction with AGC).
- ADOT holds joint meetings and training sessions with the Arizona Chapter of the Associated General Contractors of America (AGC) and with the American Council of Engineering Companies of Arizona (ACEC).
- The DBE/SBC News website/blog includes discussion of financing opportunities.

ADOT small business and DBE training provides information about opportunities to receive financing assistance through other organizations. A major component of this assistance is U.S. Small Business Administration loan programs offered through local banks and other private and not-for-profit organizations.

- For example, the Business Development Finance Corporation has locations in Phoenix and Tucson. Chicanos Por La Causa, Inc. in Phoenix offers small business financing (including SBA microloans of \$2,000 to \$5,000) and technical support.
- The PPEP Microbusiness and Housing Development Corporation provides loans between \$500 and \$75,000 to small business owners located in Southern Arizona.



- There are many other organizations throughout the state that assist minority- and women-owned firms and other small businesses that need training regarding financing or offer SBA loan programs.

**3. Providing technical assistance and other services.** ADOT has a well-developed technical assistance program and can provide referrals to other local organizations. Examples of other local sources of assistance include the following.

- **Chambers of commerce.** There are more than 70 chambers of commerce in the state, including minority and women's business organizations, that offer training and networking opportunities. There are membership organizations focusing on businesses owned by American Indians, Chinese Americans, Korean Americans, Philippine Americans, Hispanic Americans and African Americans.
- **Trade associations and professional groups.** There are many trade associations and professional groups related to transportation-related construction and professional services in Arizona. Organizations such as the Arizona Chapter of the Associated General Contractors of America (AGC) serve a broad range of firms engaged in transportation construction and other heavy construction. The American Council of Engineering Companies of Arizona (ACEC) is one example of a trade association serving engineering companies in the state. There are associations of minority contractors with Arizona chapters (e.g., Associated Minority Contractors of America) and associations of women business owners with Arizona locations (e.g., National Association of Women Business Owners). There are also local organizations such as the Minority and Small Business Alliance of Southern Arizona.

These types of organizations offer a broad range of training, other technical assistance and networking opportunities to transportation-related construction and engineering companies in Arizona. Groups such as AGC and ACEC have partnered with ADOT to provide targeted training and networking opportunities to DBEs. The groups mentioned above are just examples of trade associations and professional groups in the state; there are many more.

- **Small business assistance organizations.** Examples of small business assistance organizations are provided below.
  - There are 26 centers across the state in the Arizona Small Business Development Center Network. These centers provide business counseling, planning assistance, help concerning financing, classes and assistance bidding on government contracts.
  - SCORE has offices in communities throughout Arizona where it offers mentoring, business counseling, and workshops on topics including the basics of starting a business, how to administer and manage a business, marketing and social media, and business related computer skills and tools.

- Serving businesses in Southern Arizona, the PPEP Microbusiness and Housing Development Corporation offers training on topics such as management, pricing, market analysis, financial statements, marketing and social media, budgeting, legal services, and long-term planning.

Some business development centers focus on minority-owned companies. Examples include:

- The Minority Business Development Center in Phoenix provides minority certification assistance, procurement training, bonding assistance, management and organization consulting, access to capital, and marketing, bidding and networking assistance through partnership with the U.S. Department of Commerce.
- The National Center for American Indian Enterprise Development (NCAIED) has a Procurement Technical Assistance Center in Window Rock. It offers training, planning assistance, mentoring and technical assistance regarding marketing to all levels of government and to prime contractors. (NCAIED's national headquarters are in Mesa.)
- **Small business incubators.** Business incubators offer workspace for emerging businesses but also training, mentoring, networking and financing assistance. Examples of business incubators in Arizona include:
  - Arizona State University SkySong in Scottsdale;
  - Gangplank Business Initiatives centers in Chandler and Avondale;
  - The Northern Arizona Center for Entrepreneurship and Technology in Flagstaff; and
  - The Opportunity through Entrepreneurship Foundation center in Phoenix.

**4. Carrying out information and communications programs on contracting procedures and specific contract opportunities.** In addition to the activities discussed under Point #1 above, ADOT's activities include:

- Outreach events about specific projects;
- DBE training and one-on-one consulting sessions on construction and engineering related issues;
- "Bidding Boot Camp" training provided by the Arizona Chapter of the AGC; and
- Training at pre-bid, post award and pre-construction meetings.

Other local organizations are also available to provide such assistance. For example, the National Center for American Indian Enterprise Development (NCAIED) has a Procurement Technical Assistance Center in Window Rock.

**5. Implementing a supportive services program to develop and improve immediate and long-term business management, recordkeeping, and financial and accounting capability for DBEs and other small businesses.** ADOT has a well-developed supportive services program to provide these types of assistance to DBEs and other small businesses. It includes:

- Workshops and conferences;
- Project-specific networking events;
- Development of a Financial/Insurance/Bonding Services handbook;
- Friday Fundamentals webinars;
- DBE Academy Online;
- Mentor-protégé program;
- Outreach newsletters;
- Bid matching; and
- Free plans and specification review.

The DBE Supportive Services staff also provide referrals for business assistance and help with how to win contracts. One-on-one business counseling is also available.

**6. Providing services to help DBEs, and other small business, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasing significant projects, and achieve eventual self-sufficiency.** ADOT has a tri-level Business Development Program for new and emerging DBEs, Pacesetter (mid-level) and Master (advanced) level DBEs.

**7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low.** ADOT's Business Development Program and other assistance include programs for start-up firms. In addition, ADOT has conducted outreach to potential DBEs to encourage and provide initial guidance on DBE certification. Such recruitment can help new and growing firms participate in the technical assistance and other services of the DBE Program.

**8. Ensuring distribution of a DBE directory.** ADOT provides online access to DBE, SBC and vendor directories.

**9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.** ADOT's training efforts include emerging technology, especially assistance with accessing information about contracting opportunities through the ADOT website as well as online bidding.

**Prompt payment.** Under state law, ADOT requires prime contractor payment of their subcontractors and subconsultants within seven days from receipt of payment by ADOT. It is

ADOT policy not to hold retention from prime contractors. Prime contractors must make prompt and final payment to each subcontractor all monies, including retention, due the subcontractor within 14 days after the subcontractor has satisfactorily completed all of its work. ADOT imposes standard fines on any prime contractor violating this provision.

**Small Business Concern (SBC) Program.** ADOT has established an SBC program to promote use of registered SBC through an SBC directory and provide small businesses many of the same networking and educational opportunities as DBEs. In its contract solicitations and contracts, ADOT encourages prime consultants and contractors to foster small business inclusion.

Other ADOT efforts to promote inclusion of small businesses can positively affect SBCs.

Keen Independent researched whether ADOT could establish an SBC set-aside program or SBC contract goals program. According to ADOT legal staff, ADOT might not have authority to establish either type of program under state law.

**Mentor-protégé program.** ADOT informs DBEs and other firms of available mentor-protégé programs operated by other organizations.

**Conclusions from analysis of neutral measures.** Review of current race- and gender-neutral initiatives shows considerable ADOT efforts alone and in partnership with others. In addition, public, not-for-profit and private institutions provide networking, training and technical assistance, financing and other small business services. This assistance outside of ADOT efforts is substantial.

## **J. Summary from the Further Exploration of MBE/WBE and DBE Utilization**

The analyses presented in Chapter 7 indicate relatively consistent results of the MBE/WBE utilization analysis across:

- Contracts with and without DBE contract goals;
- ADOT and LPA contracts;
- Time periods; and
- Regions of the state.

With the consistency in utilization results, Keen Independent's disparity analyses also showed similar results across these subsets of ADOT contracts as shown for all ADOT FHWA- and state-funded contracts combined (see Chapter 6). There was a pattern of substantial disparities for each group of minority-owned firms. For white women-owned firms, some of the analyses indicated disparities and some did not.

Disparity results for construction contracts were similar to results for all contracts, as were the results for all prime contracts, large prime contracts, small prime contracts and subcontracts.

For engineering-related contracts, two groups fared better than other DBE groups: Hispanic American-owned firms and Subcontinent Asian American-owned firms. At the time of this report, ADOT had turned down the DBE certification application of the previously certified Hispanic American-owned firms that had received much of this work. As with other firms that have recently

graduated from the Federal DBE Program, this change in certified DBEs for engineering work may affect the future overall utilization of Hispanic American-owned engineering firms. The DBE-certified Subcontinent Asian American-owned firm receiving the most ADOT work had also graduated from the Program but was able to re-enter with the recent increase in certification ceilings for the Federal DBE Program.

Analysis of ADOT's operation of the Federal DBE Program indicates that it generally follows the requirements of the program, including its contract goal-setting process, provisions for good faith efforts and implementation of neutral measures. ADOT has an SBC component in its operation of the Federal DBE Program, although state law appears to constrain opportunities to extend it to a set-aside program or utilize SBC contract goals.

Keen Independent's analysis of potential DBE overconcentration did not identify any indication of overconcentration. As conditions can change, ADOT should closely monitor the potential for DBE overconcentration.